and undertakes to work with the machinery, with the operation of which he is unfamiliar, and is injured by reason of his inexperience, the employer is not answerable therefor. When a servant undertakes to engage in a master's service, and to perform certain duties, the master has a right to assume that he is qualified to perform the duties of the position he seeks to occupy, and competent to apprehend and avoid all obvious hazards of such service. *Bellows v. Ry. Co.* 157 Pa. St. 51. The great weight of authority, however, based upon a review of all the decisions seems to favor the strict application of the rule in regard to the master's liability and where he knows that the employee is inexperienced it is his duty to warn and instruct him, however obvious and apparent the dangers of the employment may be. *Murphy v. Mairs*, 6 N.Y. St. 42; *Atkins v. Thread Co.* 104 Mass. 431.

PERFORATED MUSIC ROLLS NOT SHEET MUSIC WITHIN MEANING OF COPYRIGHT LAW.

"Copyright is the exclusive right of the owner to multiply and to dispose of copies of an intellectual production." *Drone Copyright*, 100. Musical compositions were first protected under the statute 8 *Anne*, 18. In this country they were for the first time specifically protected in 1878. Musical composers had certain rights in their productions at common law, but now their rights depend wholly upon the provisions of the copyright act, such former rights having been superseded by statute. *Holmes v. Hurst*, 74 U. S. 82. An action for penal damages lies for the unlawful representation or performance of a dramatic or musical composition, and if the unlawful representation or performance is given wilfully and for profit, it is a misdemeanor, punishable by imprisonment for a term not exceeding one year. *U. S. Comp. Stat.* (1901), p. 3 415. The copyright in musical compositions is more extensively protected than the copyright in dramatic pieces. *Russel v. Smith*, 15 Sim. 181. The same principle which holds good in regard to books is applied to maps, charts, pictures, musical compositions, etc. The test is not whether the piratical production is an exact copy of the original, but whether it is substantially copied. *Emerson v. Davies*, 3 Story 768. It is true that in some parts of the statutes the words "book," "print," and "musical composition," refer to the intellectual conception as the essential element, and in other parts may refer more particularly to the material form in which it is expressed; but nowhere does either element exclusively exist, because no intellectual conception can be copyrighted until it has taken material shape. *Oliver Ditson Co. v. Littleton*, 67 Fed. 905.

The question whether or not perforated sheets of paper could be an infringement of copyrighted sheet music was first decided in 1888, by the case of *Kennedy v. McTammany*, 33 Fed. 584. In that case the defendant manufactured perforated papers which, when used in organettes, produced the music alleged to be pirated. As was said in that decision, to the ordinary mind it is certainly a

difficult thing to consider such strips of paper as sheet music. There is no clef, no bars, no lines, no spaces, nor any other marks such as are found in common printed music, but only plain strips of paper with rows of holes or perforations. They are not made to be addressed to the eye as sheet music, but they form a part of the machine. They are not designed to be used for such purposes as sheet music, nor do they in any sense occupy the same field as sheet music. They are a mechanical invention made for the sole purpose of performing tunes mechanically upon a musical instrument. Their use resembles more nearly the barrel of a hand organ or music box. It is said that sheet music may consist of different characters or devices, and that the perforated strips are simply another form of musical notation; but the reply to this is that they are not designed or used as a new form of musical notation. While it may not be denied that some persons by study and practice, may read music from these perforated strips, yet as a practical question in the musical profession, or in the sale of printed music, it may be said that they are not recognized as sheet music. In *Stein v. Rosey*, 17 App. D. C. 562, it was attempted to be shown that the wax cylinder of a phonograph was an infringement upon sheet music. The court in that case concluded that the marks upon the wax cylinder could not be made out by the eye and therefore could not be utilized in any other way than as parts of the mechanism of the phonograph. This peculiar use of a phonograph instead of copying the music in the sense of the copyright act, to the injury of the publisher, would rather seem analogous to that of one, who, having purchased the sheet music of the publisher, proceeds to perform it continually in public for his own profit.

The leading English case on this proposition is *Boosey v. Whight*, L. R. 1899, which was decided under an act defining copyright as "the sole and exclusive liberty of printing and otherwise multiplying copies." Here it was held that perforated papers, used in an Aeolian, which represented the instrumental music of certain songs, were parts of the instrument and not sheets of music within the act.

The late case of *White-Smith Music Co. v. Appollo Co.*, 139 Fed. 427, which is analogous to the cases heretofore mentioned, decides that a written musical conception, which has been copyrighted is not infringed by a perforated record or sheet designed for use in an automatic piano-player. Much stress is laid upon the fact that the perforated paper is not a copy within the meaning of the act.